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HOUSE BILL 420

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Al Park

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROHIBITING MINORS FROM BEING  
UNDER THE INFLUENCE OF ALCOHOL; MODIFYING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-2-3 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 32, as amended) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a  
child that would be designated as a crime under the law if  
committed by an adult, including the following offenses:

(1) an offense pursuant to municipal traffic  
codes or the Motor Vehicle Code:

(a) driving while under the influence of  
intoxicating liquor or drugs;

(b) failure to stop in the event of an

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1 accident causing death, personal injury or damage to property;

2 (c) unlawful taking of a vehicle or  
3 motor vehicle;

4 (d) receiving or transferring of a  
5 stolen vehicle or motor vehicle;

6 (e) homicide by vehicle;

7 (f) injuring or tampering with a  
8 vehicle;

9 (g) altering or changing of an engine  
10 number or other vehicle identification numbers;

11 (h) altering or forging of a driver's  
12 license or permit or any making of a fictitious license or  
13 permit;

14 (i) reckless driving;

15 (j) driving with a suspended or revoked  
16 license; or

17 (k) an offense punishable as a felony;

18 (2) buying, attempting to buy, receiving,  
19 possessing or being served any alcoholic [~~liquor~~] beverage,  
20 being under the influence of alcohol or being present in a  
21 licensed liquor establishment, other than a restaurant or a  
22 licensed retail liquor establishment, except in the presence of  
23 the child's parent, guardian, custodian or adult spouse. As  
24 used in this paragraph, "restaurant" means an establishment  
25 where meals are prepared and served primarily for on-premises

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1 consumption and that has a dining room, a kitchen and the  
2 employees necessary for preparing, cooking and serving meals.  
3 "Restaurant" does not include an establishment, as defined in  
4 regulations promulgated by the director of the special  
5 investigations division of the department of public safety,  
6 that serves only hamburgers, sandwiches, salads and other fast  
7 foods;

8 (3) a violation of Section 30-29-2 NMSA 1978,  
9 regarding the illegal use of a glue, aerosol spray product or  
10 other chemical substance;

11 (4) a violation of the Controlled Substances  
12 Act;

13 (5) escape from the custody of a law  
14 enforcement officer or a juvenile probation or parole officer  
15 or from any placement made by the department by a child who has  
16 been adjudicated a delinquent child;

17 (6) a violation of Section 30-15-1.1 NMSA 1978  
18 regarding unauthorized graffiti on personal or real property;  
19 or

20 (7) a violation of an order of protection  
21 issued pursuant to the provisions of the Family Violence  
22 Protection Act;

23 B. "delinquent child" means a child who has  
24 committed a delinquent act;

25 C. "delinquent offender" means a delinquent child

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1 who is subject to juvenile sanctions only and who is not a  
2 youthful offender or a serious youthful offender;

3 D. "detention facility" means a place where a child  
4 may be detained under the Children's Code pending court hearing  
5 and does not include a facility for the care and rehabilitation  
6 of an adjudicated delinquent child;

7 E. "felony" means an act that would be a felony if  
8 committed by an adult;

9 F. "misdemeanor" means an act that would be a  
10 misdemeanor or petty misdemeanor if committed by an adult;

11 G. "restitution" means financial reimbursement by  
12 the child to the victim or community service imposed by the  
13 court and is limited to easily ascertainable damages for injury  
14 to or loss of property, actual expenses incurred for medical,  
15 psychiatric and psychological treatment for injury to a person  
16 and lost wages resulting from physical injury, which are a  
17 direct and proximate result of a delinquent act. "Restitution"  
18 does not include reimbursement for damages for mental anguish,  
19 pain and suffering or other intangible losses. As used in this  
20 subsection, "victim" means a person who is injured or suffers  
21 damage of any kind by an act that is the subject of a complaint  
22 or referral to law enforcement officers or juvenile probation  
23 authorities. Nothing contained in this definition limits or  
24 replaces the provisions of Subsections A and B of Section  
25 32A-2-27 NMSA 1978;

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1           H. "serious youthful offender" means an individual  
2 fifteen to eighteen years of age who is charged with and  
3 indicted or bound over for trial for first degree murder. A  
4 "serious youthful offender" is not a delinquent child as  
5 defined pursuant to the provisions of this section; and

6           I. "youthful offender" means a delinquent child  
7 subject to adult or juvenile sanctions who is:

8                   (1) fourteen to eighteen years of age at the  
9 time of the offense and who is adjudicated for at least one of  
10 the following offenses:

11                           (a) second degree murder, as provided in  
12 Section 30-2-1 NMSA 1978;

13                           (b) assault with intent to commit a  
14 violent felony, as provided in Section 30-3-3 NMSA 1978;

15                           (c) kidnapping, as provided in  
16 Section 30-4-1 NMSA 1978;

17                           (d) aggravated battery, as provided in  
18 Subsection C of Section 30-3-5 NMSA 1978;

19                           (e) aggravated battery against a  
20 household member, as provided in Subsection C of Section  
21 30-3-16 NMSA 1978;

22                           (f) aggravated battery upon a peace  
23 officer, as provided in Subsection C of Section 30-22-25 NMSA  
24 1978;

25                           (g) shooting at a dwelling or occupied

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1 building or shooting at or from a motor vehicle, as provided in  
2 Section 30-3-8 NMSA 1978;

3 (h) dangerous use of explosives, as  
4 provided in Section 30-7-5 NMSA 1978;

5 (i) criminal sexual penetration, as  
6 provided in Section 30-9-11 NMSA 1978;

7 (j) robbery, as provided in Section  
8 30-16-2 NMSA 1978;

9 (k) aggravated burglary, as provided in  
10 Section 30-16-4 NMSA 1978;

11 (l) aggravated arson, as provided in  
12 Section 30-17-6 NMSA 1978; or

13 (m) abuse of a child that results in  
14 great bodily harm or death to the child, as provided in Section  
15 30-6-1 NMSA 1978;

16 (2) fourteen to eighteen years of age at the  
17 time of the offense, ~~[and]~~ who is adjudicated for any felony  
18 offense and who has had three prior, separate felony  
19 adjudications within a three-year time period immediately  
20 preceding the instant offense. The felony adjudications relied  
21 upon as prior adjudications shall not have arisen out of the  
22 same transaction or occurrence or series of events related in  
23 time and location. Successful completion of consent decrees  
24 are not considered a prior adjudication for the purposes of  
25 this paragraph; or

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1 (3) fourteen years of age and who is  
2 adjudicated for first degree murder, as provided in Section  
3 30-2-1 NMSA 1978."

4 Section 2. Section 60-7B-1 NMSA 1978 (being Laws 1993,  
5 Chapter 68, Section 22, as amended) is amended to read:

6 "60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO  
7 MINORS--POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS.--

8 A. It is a violation of the Liquor Control Act for  
9 a person, including a person licensed pursuant to the  
10 provisions of the Liquor Control Act, or an employee, agent or  
11 lessee of that person, if [~~he~~] the person knows or has reason  
12 to know that [~~he~~] the person is violating the provisions of  
13 this section, to:

14 (1) sell, serve or give alcoholic beverages to  
15 a minor or permit a minor to consume alcoholic beverages on the  
16 licensed premises;

17 (2) buy alcoholic beverages for or procure the  
18 sale or service of alcoholic beverages to a minor;

19 (3) deliver alcoholic beverages to a minor; or

20 (4) aid or assist a minor to buy, procure or  
21 be served with alcoholic beverages.

22 B. It is not a violation of the Liquor Control Act,  
23 as provided in Subsection A or C of this section, when:

24 (1) a parent, legal guardian or adult spouse  
25 of a minor serves alcoholic beverages to that minor on real

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1 property, other than licensed premises, under the control of  
2 the parent, legal guardian or adult spouse; or

3 (2) alcoholic beverages are used in the  
4 practice of religious beliefs.

5 C. It is a violation of the Liquor Control Act for  
6 a minor to buy, attempt to buy, receive, possess, be under the  
7 influence of or permit [~~himself to be~~] being served with  
8 alcoholic beverages. Failing field sobriety tests constitutes  
9 prima facie evidence of being under the influence of alcohol.

10 D. When a person other than a minor procures  
11 another person to sell, serve or deliver alcoholic beverages to  
12 a minor by actual or constructive misrepresentation of facts or  
13 concealment of facts calculated to cause the person selling,  
14 serving or delivering the alcoholic beverages to the minor to  
15 believe that the minor is legally entitled to be sold, served  
16 or delivered alcoholic beverages, and actually deceives that  
17 person by that misrepresentation or concealment, then the  
18 procurer and not the person deceived shall have violated the  
19 provisions of the Liquor Control Act.

20 E. As used in the Liquor Control Act, "minor" means  
21 a person under twenty-one years of age.

22 F. In addition to the penalties provided in Section  
23 60-6C-1 NMSA 1978, a violation of the provisions of Subsection  
24 A of this section is a fourth degree felony and the offender  
25 shall be sentenced pursuant to the provisions of Section

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1 31-18-15 NMSA 1978.

2 G. A violation of the provisions of Subsection C of  
3 this section is a misdemeanor and the offender shall be  
4 punished as follows:

5 (1) for a first violation [~~the offender shall~~  
6 ~~be~~]:

7 (a) the offender shall be fined an  
8 amount not more than one thousand dollars (\$1,000); [~~and~~]

9 (b) the offender shall be ordered by the  
10 sentencing court to perform thirty hours of community service  
11 related to reducing the incidence of driving while under the  
12 influence of intoxicating liquor;

13 (c) the offender shall be ordered by the  
14 sentencing court to attend an alcohol prevention or early  
15 intervention program approved by the department of health. The  
16 program shall be a minimum of twelve hours in length; and

17 (d) an adjudication of guilt shall not  
18 be entered if the offender successfully completes the  
19 requirements of this paragraph;

20 (2) for a second violation, the offender  
21 shall:

22 (a) be fined an amount not more than one  
23 thousand dollars (\$1,000);

24 (b) be ordered by the sentencing court  
25 to perform forty hours of community service related to reducing

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1 the incidence of driving while under the influence of  
2 intoxicating liquor; and

3 (c) have [~~his~~] the offender's driver's  
4 license suspended for a period of ninety days. If the minor is  
5 too young to possess a driver's license at the time of the  
6 violation, then ninety days shall be added to the date [~~he~~] the  
7 offender would otherwise become eligible to obtain a driver's  
8 license; and

9 (3) for a third or subsequent violation, the  
10 offender shall:

11 (a) be fined an amount not more than one  
12 thousand dollars (\$1,000);

13 (b) be ordered by the sentencing court  
14 to perform sixty hours of community service related to reducing  
15 the incidence of driving while under the influence of  
16 intoxicating liquor; and

17 (c) have [~~his~~] the offender's driver's  
18 license suspended for a period of two years or until the  
19 offender reaches twenty-one years of age, whichever period of  
20 time is greater.

21 H. A violation of the provisions of Subsection D of  
22 this section is a fourth degree felony, and the offender shall  
23 be sentenced pursuant to the provisions of Section 31-18-15  
24 NMSA 1978."

25 Section 3. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2009.

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